

CJA 1396/94

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APPEAL OF PRISONER

No. 1111 Name राजकुमार उर्फ भकलेट
 Father's name विष्णुराम गोरे, निवासी शाम - चाचीडांड, थाना - पलापपुर
 Residence जिला - सरगुजा (म.प्र.) Age 26 वर्ष
 Sentenced to अज्ञात कारावास on 8/9/1994
 Under Section 302 मादक द्रव्य by शायक द्वितीय अपर सत्र न्यायाधीश, अंबिकपुर जिला - सरगुजा (म.प्र.)

S.T. No. 204/88

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not be heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

- 1 Date of Application for copy of Judgement _____
- 2 Date on which copy received 16/9/1994
- 3 Date on which Appeal sent _____
- 4 Whether the prisoner wishes to be represented or not. _____

No. 1111 Name राजकुमार उर्फ भकलेट S/o विष्णुराम गोरे
 Confined in के.डी. जेल Jail रामपुर (म.प्र.)
 No. 737/विधि/1994 Dated 199 29/9/94
 Forwarded to the अतिरिक्त पंजीयक महोदय मन्त्री उच्च न्यायालय मध्यप्रदेश, जबलपुर (म.प्र.)
 to gether with a copy of judgement or order passed in the case for favour of
 submission to the proper Appellate court.

संदर्भ:- S.T. No. 204/88 की विधि
 प्रतिलिपि - मूलतः 1

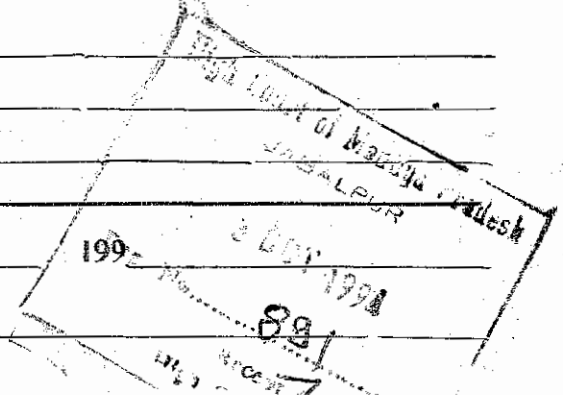
Superintendent

राजकुमार, रामपुर (म.प्र.)

Jail

Date of receipt in _____ Office _____
 Date of receipt of record to accompany the _____
 Memo of Appeal to the Appellate court _____

No. _____ Dated _____
 Forwarded to the _____



HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1396 of 1994

Appellant	Ram Kumar alias Jhaklet
Versus	
Respondent	State of M.P. (now State of Chhattisgarh) through Police Station - Pratappur, District- Surguja.

DIVISION BENCH : Hon'ble Mr. Justice **L. C. Bhadoo**, and
Hon'ble Mr. Justice **Satish K. Agnihotri**, JJ

Shri Abhay Tiwari, Advocate for the appellant.
Shri Sudhir Bajpayee, Panel lawyer for the State.

ORAL JUDGMENT

(24th July, 2006)

The following Judgment of the Court is delivered by **L. C. Bhadoo, J.**

1. The appellant has preferred this appeal, from jail, under Section 374(2) of the Code of Criminal Procedure, questioning the legality and correctness of the judgment of conviction and order of sentence dated 8.9.1994, whereby the Second Additional Sessions Judge, Ambikapur, District- Surguja after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code for committing murder of Ram Kishan sentenced him to undergo imprisonment for life.
2. The case of the prosecution, in brief, is that on 27.8.1988 Ram Kishan (deceased) was plowing his agricultural field and in the neighboring field Ramchand, Ram Vraksh (P.W. 13), Bodhram (P.W.12) and Ghasiram (P.W.10) were also plowing their

agricultural field. At about 11 a.m. accused Ram Kumar came near Ram Kishan, where he was plowing his field and attacked on the head with the axe, which was witnessed by the above witnesses. After attacking, the accused/appellant ran away with his axe. The villagers were informed about the incident and Ram Kishan was taken to the police station, where the report(P.W.6-A) of the incident was lodged by Roopchand (P.W.11) in the police station- Pratappur. On receiving this report the station house officer, police station Pratappur registered the F.I.R. and left for the scene of occurrence. After giving notice (Ex. P/9) to the panchas he prepared the panchanama (Ex. P/10) of the body of Ram Kishan. The body was sent for postmortem examination to the primary health centre, Pratappur, where Dr. S. S. Paikra (P.W.17) conducted the postmortem and prepared the postmortem report (Ex. P/16) and opined that the cause of death was due to intracranial hemorrhage. During the investigation plain soil and blood stain soil were taken in to possession from the place of occurrence vide Ex.P/2, blood stain Dhoti of the deceased was taken in to possession vide Ex.P/3 and other cloth were taken into possession vide Ex. P/4. While in the police custody, the accused gave memorandum Ex.P/5 regarding weapon of offence i.e. axe and in pursuance to that the axe was recovered at the instance of the accused vide Ex. P/18.

3. After completion of the investigation the charge-sheet was filed in the Court of Judicial Magistrate First Class, Soorajpur, who in turn committed the case to the Sessions Judge, Surguja

from where learned Second Additional Sessions Judge, Ambikapur, received the case on transfer.

4. The prosecution in order to establish the charges against the accused/appellant examined as many as 20 witnesses. On the other hand the statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated.
5. Learned trial Court after hearing, learned Additional Public Prosecutor and learned counsel for the accused, convicted and sentenced the accused/appellant, as mentioned in para - 1 of this judgment.
6. We have heard Shri Abhay Tiwari, learned counsel appearing on behalf of the appellant and Shri Sudhir Bajpayee, learned Panel lawyer for the respondent/State.
7. As far as the question of homicidal death of Ram Kishan is concerned, the same has not been disputed by the counsel for the accused/appellant. Even otherwise, from the evidence of Ghasi Ram (P.W.10), Roopchand (P.W. 11), Budhram (P.W.12), Ram Vriksha (P.W.13) and the evidence of Dr. S. S. Painkra (P.W.17), who conducted the postmortem on the body of Ram Kishan and found that there was an incised wound on the head in the size of 3 x ¼ x ¼ inches, over right temporal-parietal portion and there was a fracture of the skull, his report is Ex.P/16, in which the cause of death was mentioned as, coma due to excessive bleeding. Therefore, in view of the

above evidence it is established that the death of Ram Kishan was homicidal in nature.

8. As far as the involvement of the accused/appellant in the crime in question is concerned, Ghasi Ram (P.W.10), Roopchand (P.W. 11), Budhram (P.W.12) and Ram Vriksha (P.W.13) are the persons who were plowing their fields at the relevant time which was adjacent to the field of the deceased Ram Kishan and they have stated that on 27.8.1988 at about 11 a.m. when the deceased was plowing his field, the accused/appellant, all of a sudden, carrying an axe in his hand came there and assaulted the deceased and ran away, carrying axe with him. In the cross examination of these witnesses the defence has not been able to elicit any circumstance or fact which makes the evidence of these witnesses untrustworthy or unreliable. More over the accused made extra judicial confession before Gorelal (P.W.20), who has stated that the accused came to him and stated that he had attacked his uncle. He disclosed the uncle as Ram Kishan. Therefore, in view of the above evidence it is established that the accused was the person who attacked the deceased and to that extent we do not find any illegality or infirmity in the judgment of the trial Court as the same is based on the legal and clinching evidence and there is nothing on record from which this Court can take a different view from the trial Court.
9. Learned counsel for the appellant argued that there was a dispute between the deceased and the accused regarding partition of land, as the accused is son of the brother of the

deceased and the deceased was not giving his share, therefore in the heat of passion, all of a sudden, the accused/appellant went to the field of the deceased and assaulted him, without having any intention to cause his death.

10. On the other hand learned Panel lawyer for the State supported the judgment.
11. In order to appreciate the arguments advanced by Shri Abhay Tiwari, learned counsel for the appellant, we have perused the evidence. It has come on record in the cross examination of the witness that the accused was demanding his share of land and on account of that there was some dispute between the accused and deceased, and on the fateful day, all of a sudden the accused went to the field of the deceased and attacked him. Therefore, from the above circumstances it cannot be said that the accused assaulted the deceased with the intention to cause his death but the manner in which the accused assaulted the deceased and that too with axe, it can safely be inferred that the accused was having knowledge that by assaulting with axe he may likely to cause death of Ram Kishan. Accordingly, the offence against the accused is made out under Section 304- Part-II of the I.P.C.
12. In the result, the conviction and sentence of the appellant for the offence under section 302 cannot be sustained. The appeal is partly allowed, the conviction of the appellant under Section 302 of the I.P.C. and sentence for life imprisonment is set-aside and instead the appellant is convicted under section 304

Part-II of the I.P.C. and sentenced to undergo rigorous imprisonment of 10 years.

13. It is stated by learned counsel for the appellant that the appellant is in jail since 30th July, 1988, which is not disputed by learned counsel for the State. Therefore the accused is in custody for about 18 years, therefore he has already undergone the sentence. He be released forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Satish K. Agnihotri
Judge

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